[Submitting Counsel Identified on Signature Page]

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORPORATION and ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-02880-JSC

OMNIBUS ADMINISTRATIVE MOTION TO SEAL TRIAL EXHIBITS PURSUANT TO COURT ORDER (ECF NO. 335)

Dept.: Courtroom 8—19th Floor Judge: Honorable Jacqueline S. Corley

Pursuant to Civil Local Rules 7-11 and 79-5(c) and the Court's July 26, 2023 Order Re Motions to Seal and Motions for *In Camera* Review Regarding Trial Exhibits (ECF No. 335), Defendant Microsoft Corporation ("Microsoft"), Defendant Activision Blizzard, Inc. ("Activision"), and designating non-parties involved in this action (collectively, the "Designating Parties") respectfully move this Court for an order to seal portions of certain trial exhibits which the Designating Parties have designated as confidential.

On July 26, 2023, the Court directed the Designating Parties to "jointly file an omnibus motion to seal pursuant to Civil Local Rule 79-5 within 21 days of the date of this Order" with respect to "any outstanding sealing requests or remaining issues for trial exhibits not addressed by the Court." ECF No. 335, at 2. Accordingly, the Designating Parties have identified below highly confidential material found in certain trial exhibits, along with the specific bases for sealing required under Local Rule 79-5. The proposed sealing and *in camera* treatment reflect the Designating Parties' good-faith efforts to narrowly seek sealing or *in camera* treatment of only that information which is competitively sensitive, the public disclosure of which would cause injury to the Designating Parties that cannot be avoided through any more restrictive alternative means:

EXHIBITS DESIGNATED BY ACTIVISION

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3	Exhibit	Location Admitted / Cited	Designating Party	Treatment Requested	Declaration	Basis for Sealing Request
4					in Support of Sealing	
5 6	PX2094	Opinion at 11	Activision	In camera	ECF No. 205 at 7	This exhibit contains non-public and highly sensitive
7						information including, but not limited to, internal decision-
8						making processes, investment
9						decisions, strategic evaluation of forward-looking
10						opportunities, market share
11						analyses, assessment of the competitive landscape,
12						business partnerships, terms of existing confidential
13						agreements, revenue figures
14						and projections, and internal presentations discussing
15						business strategy, which could
16						be used to injure Activision if made publicly available.
17	PX2133	6/28/23	Activision	Redacted	ECF No. 205	This exhibit contains non-
18	172133	Tr. (Kotick),	7 CUVISION	Reducted	at 8	public and highly sensitive
19		at 754:17–				information including, but not limited to, internal decision-
20		18				making processes, investment
21						decisions, strategic evaluation of forward-looking
22						opportunities, business
23						partnerships, terms of existing confidential agreements, and
24 25						revenue figures and projections, which could be
26						used to injure Activision if
27						made publicly available.
28						
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1 2	Exhibit	Location Admitted	Designating Party	Treatment		Basis for Sealing Request
3		/ Cited		Requested	Declaration in Support of Sealing	
5	PX2138	Opinion at 47	Activision	In camera	ECF No. 205 at 9	This exhibit contains non- public and highly sensitive information including, but not
6 7						limited to, internal decision- making processes, investment
8						decisions, strategic evaluation of forward-looking
9						opportunities, assessment of the competitive landscape,
10						business partnerships, terms of
11						existing confidential agreements, revenue figures
12						and projections, and internal
13						presentations discussing business strategy, which could
14						be used to injure Activision if
15						made publicly available.
16	PX2167	Opinion at 29	Activision	In camera	ECF No. 205	This exhibit contains non-
17		at 29			at 10	public and highly sensitive information including, but not
18						limited to, internal decision-
19						making processes, investment decisions, strategic evaluation
20						of forward-looking
21						opportunities, assessment of the competitive landscape,
22						business partnerships, terms of
23						existing confidential agreements, and internal
24						presentations discussing
25						business strategy, which could be used to injure Activision if
26						made publicly available.
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Exhibit	Location Admitted / Cited	Designating Party	Treatment	Location of Original Declaration in Support of Sealing	Basis for Sealing Request
PX2421	6/28/23 Tr. (Kotick), at 771:3–	Activision	Redacted	ECF No. 205 at 17	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, and terms of existing confidential agreements, which could be used to injure Activision if made publicly available.

EXHIBITS DESIGNATED BY GOOGLE II.

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2	Exhibit No.	Location Admitted /	Designating Party	<i>In Camera</i> Treatment	Basis for Sealing Request
3	110.	Cited		Requested (Pages:Lines or	Request
4				Exhibit)	
5	PX8003	Plaintiff's Proposed	Google LLC	(¶2:10-11; ¶15:10)	See ECF No. 155. This section of the Declaration contains
6		Findings of Fact and Conclusions			commercially-sensitive details regarding
7		of Law at ECF No. 175;			Google's financial investment in its Stadia
8		Statement Identifying			business which, if disclosed, could reveal
9		Witnesses and Exhibits			Google's forward- looking business
10		to be Used June 23, 2023			strategies. Legitimate confidentiality and
11		at ECF No.			competitive interests warrant the sealing of
12		Plaintiff's Final			this highly confidential information, the
13		Findings of Fact and			disclosure of which would cause injury to
14		Conclusions of Law at			Google that could not be
15		Dkt. No. 309.			avoided through any less restrictive alternative to sealing.
16				(#IO #IO 1 2	_
17				(¶9; ¶20:1-2; ¶21:5)	See ECF No. 155. This section of the
18					Declaration contains non-public and
19					commercially-sensitive actual and forecasted
20					user totals for Google's Stadia service that could
21					give competitors insight into Google's forward- looking business
22					strategies. Legitimate confidentiality and
23					competitive interests warrant the sealing of
24					this highly confidential information, the
25					disclosure of which
26					would cause injury to Google that could not be avoided through any
27					less restrictive
28				(¶21.0)	alternative to sealing.
				(¶21:8)	See ECF No. 155. This

1 2 3	Exhibit No.	Location Admitted / Cited	Designating Party	In Camera Treatment Requested (Pages:Lines or Exhibit)	Basis for Sealing Request
4				Exhibity	section of the Declaration contains the
5					identities of Google's customers, which
6					implicates confidentiality interests
7					of third parties and, if disclosed, could harm
8					Google's ability to contract with third
9					parties on a confidential basis. The disclosure of
10					the identities of Google's customers or
11					partners would also allow Google's
12					competitors to target those customers in an
13					attempt to deprive Google of business.
14					Legitimate confidentiality and
15					competitive interests warrant the sealing of
16					this highly confidential information, the
17					disclosure of which would cause injury to
18					Google that could not be avoided through any
19					less restrictive alternative to sealing.
20	PX7063	Statement	Google LLC	(13:23-14:4)	See ECF No. 155. This
21		Identifying Witnesses			section of the Transcript contains proprietary
22		and Exhibits to be Used			details regarding the technical structure of
23		June 23, 2023 at ECF No.			Google's cloud gaming service. This is highly
24		193.			confidential information that could allow
25					competitors to replicate Google's services and
26					harm Google's ability to compete in offering future services.
27					Legitimate confidentiality and
28					competitive interests warrant the sealing of

1 2	Exhibit No.	Location Admitted / Cited	Designating Party	In Camera Treatment Requested	Basis for Sealing Request
3		Citeu		(Pages:Lines or Exhibit)	
4					this highly confidential information, the
5					disclosure of which would cause injury to
6					Google that could not be avoided through any
7					less restrictive alternative to sealing.
8				(19:21-20:16)	See ECF No. 155. This section of the Transcript
9					contains details regarding how Google
10					assessed whether Stadia was ready for public
11					launch. This is highly confidential information
12					that could give competitors insight into
13					Google's forward- looking business
1415					practices. Legitimate confidentiality and
16					competitive interests warrant the sealing of this highly confidential
17					information, the disclosure of which
18					would cause injury to Google that could not be
19					avoided through any less restrictive
20					alternative to sealing.
21				(31:15-35:2)	See ECF No. 155. This section of the Transcript
22					contains details regarding how Google
23					distributed hardware and software bundles for
24					Stadia. This is highly confidential information
25					that could give competitors insight into
26					Google's forward- looking business
27					practices. Legitimate confidentiality and
28					competitive interests warrant the sealing of this highly confidential

1	Exhibit No.	Location Admitted /	Designating Party	In Camera Treatment	Basis for Sealing Request
2 3		Cited		Requested (Pages:Lines or Exhibit)	
4					information, the disclosure of which
5					would cause injury to Google that could not be
6					avoided through any less restrictive alternative to sealing.
7				(41:16-42:10;	See ECF No. 155.
8 9				46:5-48:2)	These sections of the Transcript contains details regarding
10					internal discussions related to Stadia's
11					business model. This is highly confidential
12					information that could give competitors insight
13					into Google's forward- looking business
14					practices. Legitimate confidentiality and
15					competitive interests warrant the sealing of this highly confidential
16					information, the disclosure of which
17					would cause injury to Google that could not be
18					avoided through any less restrictive
19					alternative to sealing.
20				(43:11)	See ECF No. 155. This section of the Transcript
21					contains an internal Google email address.
22					The public does not have an interest in
23					learning internal contact information for
24					Google's employees, and thus, legitimate
2526					confidentiality interests warrant the sealing of this information.
27				(56:24-57:2;	See ECF No. 155. This
28				57:10-12)	section of the Transcript contains details regarding Google's

1	Exhibit No.	Location Admitted / Cited	Designating Party	In Camera Treatment	Basis for Sealing Request
2 3		Chea		Requested (Pages:Lines or Exhibit)	
4					negotiations with a potential distributor of
5					its Stadia mobile app. This is highly
6					confidential information that could give
7					competitors an advantage in negotiating
8					against Google and insight into Google's forward-looking
9					business practices. Legitimate
10					confidentiality and competitive interests
11					warrant the sealing of this highly confidential
12					information, the disclosure of which
13					would cause injury to Google that could not be
14					avoided through any less restrictive
15 16				(84:1-85:16;	alternative to sealing. See ECF No. 155. This
17				87:15-88:21)	section of the Transcript contains commercially-
18					sensitive details regarding Google's
19					financial investment in its Stadia business
20					which, if disclosed, could reveal Google's
21					forward-looking business strategies.
22					Legitimate confidentiality and
23					competitive interests warrant the sealing of this highly confidential
24					information, the disclosure of which
25					would cause injury to Google that could not be
26					avoided through any less restrictive
27					alternative to sealing.
28				(141:19-21; 142:6-21)	See ECF No. 155. This section of the Transcript

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Exhibit No.	Location Admitted / Cited	Designating Party	In Camera Treatment Requested (Pages:Lines or Exhibit)	Basis for Sealing Request
				contains a third party's confidential information, the disclosure of which would implicate that party's interest and would harm Google's ability to partner with third parties on a confidential basis in the future. Legitimate confidentiality and competitive interests warrant the sealing of this highly confidential information, the disclosure of which would cause injury to Google that could not be avoided through any less restrictive alternative to sealing.
PX3058	Plaintiff's Final Findings of Fact and Conclusions of Law at Dkt. No. 309.	Google LLC	(email addresses)	See ECF No. 155. This email contains internal Google email addresses. The public does not have an interest in learning internal contact information for Google's employees, and thus, legitimate confidentiality interests warrant the sealing of this information.

III. EXHIBITS DESIGNATED BY MICROSOFT

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX0003	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion)	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information of projections, internal user data, confidential terms of existing agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. It further provides insights on Microsoft's engagement with the FTC for specific requests of information and documentary material, which are confidential, and which could be used to injure the designating parties if made publicly available.
PX0006	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-publi and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information o

¹ Legitimate private interests warrant sealing of the Designating Parties' information in this chart, and the unsealing of the information would result in injury to the Designating Parties that cannot be avoided through any less restrictive alternatives.

OMNIBUS ADMIN MOTION TO SEAL

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2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3					projections, internal user data,
5					confidential terms of existing agreements, potential business partnerships/negotiations, which
6					could be used to injure the designating parties if made publicly available.
7	PX0014	In comona	Microsoft	Dirt 224 (Lee Deel)	
8	PA0014	In camera treatment	WIICIOSOIT	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information
9		requested			including, but not limited to, internal decision-making
10					processes, future business strategy, market share analyses,
11 12					assessment of the competitive landscape, which could be used
13					to injure the designating parties if made publicly available. This
14					document is a confidential submission to a regulator.
15	PX0038	Proposed	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public
16		redactions submitted to		22 (200 2001)	and highly sensitive information including, but not limited to,
17		Court			investment decisions, future business strategy, strategic
18					evaluation of forward-looking
19					opportunities, internal financial/revenue information or
20					projections, which could be used to injure the designating parties
21					if made publicly available.
22	PX1025	In camera treatment	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information
23		requested			including, but not limited to, internal decision-making
24					processes, strategic evaluation of forward-looking opportunities,
25					internal financial/revenue
26 27					information or projections, which could be used to injure the
28					designating parties if made publicly available.
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2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3	PX1065		Microsoft	Tri-1 Day 2, 206,12.	This working a subside a subside and a subside
4	FA1003	In camera treatment		Trial Day 2: 306:13; Dkt. 327 (Preliminary	This portion contains non-public and highly sensitive information
5		requested		Injunction Opinion)	including, but not limited to, internal decision-making
6					processes, investment decisions, future business strategy, market
7					share analyses, strategic evaluation of forward-looking
8					opportunities, assessment of the
9					competitive landscape, internal financial/revenue information or
10					projections, internal user data, confidential terms of existing
11					agreements, potential business partnerships/negotiations, which
12					could be used to injure the designating parties if made
13					publicly available.
14	PX1070	1		Dkt. 224 (Lee Decl.);	This portion contains non-public
15		redactions submitted to		Dkt. 327 (Preliminary Injunction Opinion)	and highly sensitive information including, but not limited to,
16		Court		Proposed redactions do not include the portions	future business strategy, market share analyses, strategic
17				cited in the Court's	evaluation of forward-looking opportunities, assessment of the
18 19				public opinion.	competitive landscape, potential business
20					partnerships/negotiations, which
21					could be used to injure the designating parties if made
22					publicly available.
23	PX1075	In camera treatment	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information
24		requested			including, but not limited to, internal decision-making
25					processes, assessment of the competitive landscape, internal
26					financial/revenue information or
27					projections, which could be used to injure the designating parties
28					if made publicly available.

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ements, potential business erships/negotiations, which
l be used to injure the
nating parties if made cly available.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX1136	Proposed redactions submitted to	Microsoft	Trial Day 3; Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction	This portion contains non-public and highly sensitive information including, but not limited to,
	Court		Opinion)	internal decision-making processes, investment decisions,
			Proposed redactions do not include the portions cited in the Court's	future business strategy, market share analyses, strategic
			public opinion.	evaluation of forward-looking opportunities, assessment of the
				competitive landscape, internal financial/revenue information or projections, internal user data,
				confidential terms of existing agreements, potential business
				partnerships/negotiations, which could be used to injure the
				designating parties if made publicly available.
PX1145	In camera	Microsoft	Trial Day 2: 299:16;	This portion contains non-public
	treatment requested		Dkt. 224 (Lee Decl.)	and highly sensitive information including, but not limited to,
				future business strategy, internation of projections, which could be used
				to injure the designating parties if made publicly available.
PX1151	Proposed	Microsoft	Trial Day 5: 941:24	This portion contains non-public
	redactions submitted to			and highly sensitive information including, but not limited to,
Court	Court			future business strategy, assessment of the competitive
				landscape, which could be used to injure the designating parties if made publicly available.
PX1154	Previously	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary	This portion contains non-public and highly sensitive information
	ruled in camera;		Injunction Opinion)	including, but not limited to business partnerships and future
	proposed redactions		Proposed redactions do not include the portions	business strategy which could be used to injure the designating
	submitted to Court in light of		cited in the Court's public opinion.	parties if made publicly available.

OMNIBUS ADMIN MOTION TO SEAL

CASE No. 3:23-cv-02880-JSC

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3		public opinion cite			
5					
$\begin{bmatrix} 5 \\ 6 \end{bmatrix}$					
7	PX1240	Duarianaly	Microsoft	Triol Day 5: 026:12:	This neution contains non myhlis
8	PX1240	Previously ruled <i>in</i>	Microsoft	Trial Day 5: 936:12; Dkt. 327 (Preliminary	This portion contains non-public and highly sensitive information
9		camera; proposed		Injunction Opinion) Proposed redactions do	including, but not limited to, detailed metrics used for analysis
10		redactions submitted to		not include the portions cited in the Court's	of gaming business, investment decisions, future business
11		Court in light of		public opinion.	strategy, market share analyses, assessment of the competitive
12		public opinion cite			landscape, internal financial/revenue information or
13					projections, internal user data, which could be used to injure the
14					designating parties if made publicly available.
15 16	PX1274	Proposed	Microsoft	Trial Day 4: 833:12	This portion contains non-public
17		redactions submitted to			and highly sensitive information including, but not limited to,
18		Court			potential business partnerships/negotiations, which
19					could be used to injure the designating parties if made
20					publicly available.
21	PX1275	Proposed redactions	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary	This portion contains non-public and highly sensitive information
22		submitted to Court		Injunction Opinion)	including, but not limited to, assessment of the competitive
23	Court		Proposed redactions do not include the portions	landscape, which could be used	
24			cited in the Court's public opinion.	to injure the designating parties if made publicly available.	
25 26	PX1283	Proposed	Microsoft	N/A (noticed only);	This portion contains non-public
27		redactions submitted to		Dkt. 327 (Preliminary Injunction Opinion)	and highly sensitive information including, but not limited to,
28		Court in light of public		Proposed redactions do not include the portions	strategic evaluation of forward- looking opportunities, which could be used to injure the

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
	opinion cite		cited in the Court's public opinion.	designating parties if made publicly available.
PX1324	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, future business strategy, which could be used to injure the designating parties if made publicly available.
PX1425	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, investment decisions, internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX1471	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, investment decisions, internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX1476	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy, assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available.

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3 4	PX1516	Previously in camera;	Microsoft	N/A (noticed only); Dkt. 327 (Preliminary	This portion contains non-public and highly sensitive information
5		Proposed redactions		Injunction Opinion) Proposed redactions do	including, but not limited to, detailed metrics used for analysis
6		submitted to Court in		not include the portions cited in the Court's	of gaming business, investment decisions, future business
7		light of public		public opinion.	strategy, market share analyses, assessment of the competitive
8 9		opinion cite			landscape, internal financial/revenue information or
10					projections, internal user data, which could be used to injure the designating parties if made
11					publicly available.
12	PX1517	In camera treatment	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information
13		requested			including, but not limited to, future business strategy, strategic
14					evaluation of forward-looking opportunities, internal
15 16					financial/revenue information or projections, which could be used
17					to injure the designating parties if made publicly available.
18	PX1529	Proposed	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public
19		redactions submitted to			and highly sensitive information including, but not limited to,
20		Court			investment decisions, potential business
21 22					partnerships/negotiations, which could be used to injure the
23					designating parties if made publicly available.
24	PX1538	Proposed	Microsoft	Dkt. 224 (Lee Decl.);	This portion contains non-public
25		redactions submitted to		Dkt. 327 (Preliminary Injunction Opinion)	and highly sensitive information including, but not limited to,
26		Court in light of		Proposed redactions do	future business strategy, market share analyses, strategic
27		public opinion cite		not include the portions cited in the Court's	evaluation of forward-looking opportunities, assessment of the
28		- F		public opinion.	competitive landscape, potential business

OMNIBUS ADMIN MOTION TO SEAL

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3 4 5					partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
6 7 8 9 10	PX1571	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available.
11 12 13 14	PX1603	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy and internal user data, which could be used to injure the designating parties if made publicly
15 16					available.
17 18 19 20 21	PX1613	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available.
22 23 24 25 26 27 28	PX1624	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and future business strategy, which could be used to injure the designating parties if made publicly available.

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1 2 3	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
4	PX1747	In camera treatment	Microsoft	Trial Day 4: 829:19	This portion contains non-public and highly sensitive information
5		requested			including, but not limited to,
6					internal financial/revenue information or projections,
7					which could be used to injure the designating parties if made
8					publicly available.
9	PX1763	Proposed	Microsoft	Dkt. 224 (Lee Decl.);	This document contains non-
10		redactions submitted to		Dkt. 327 (Preliminary Injunction Opinion)	public and highly sensitive information including, but not
11		Court in light of	Proposed redactions do	limited to, internal decision- making processes, investment	
12	public opinion cite	cited in the Court's	decisions, future business strategy, strategic evaluation of		
13 14		opinion ene		public opinion.	forward-looking opportunities, internal financial/revenue
15					information or projections, which could be used to injure the
16					designating parties if made
17	PX1777	Dwayiougly in	Microsoft	Trial Day 4: 845:23;	publicly available. This partian contains non public
18	FAI///	camera;	Wilciosoft	Dkt. 327 (Preliminary	This portion contains non-public and highly sensitive information
19		Proposed redactions		Injunction Opinion) Proposed redactions do	including, but not limited to, future business strategy, market
20		submitted to Court in		not include the portions cited in the Court's	share analyses, strategic evaluation of forward-looking
21		light of public		public opinion.	opportunities, assessment of the competitive landscape, potential
22		opinion cite			business partnerships/negotiations, which
23 24					could be used to injure the designating parties if made
25		_			publicly available.
26	PX1828	In camera treatment	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information
27		requested			including, but not limited to, internal decision-making
28					processes, future business strategy, and internal

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3 4					financial/revenue information or projections, which could be used
5					to injure the designating parties if made publicly available.
6					
7	PX1877	In camera	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public
8		treatment requested			and highly sensitive information including, but not limited to,
9					internal decision-making processes and future business
10					strategy, which could be used to injure the designating parties if
11					made publicly available.
12 13	PX1889	In camera treatment	Microsoft	Trial Day 2: 285:11	This document contains non- public and highly sensitive
14		requested			information including, but not limited to strategic evaluation of
15					forward-looking opportunities,
16					which could be used to injure Microsoft if made publicly available. This document was
17					treated as highly confidential
18					during the evidentiary hearing (see Tr. 519), but Microsoft's
19					request for <i>in camera</i> treatment at Dkt. 225 was not specifically
20					ruled on.
21	PX1897	In camera treatment	Microsoft	Trial Day 2: 331:11	This portion contains non-public and highly sensitive information
22		requested			including, but not limited to, future business strategy and
23					assessment of the competitive landscape, which could be used
2425					to injure the designating parties if made publicly available.
26					in made paonery available.
27					

OMNIBUS ADMIN MOTION TO SEAL

1	E-1:1:4	D4: 4	D	Y	Davis Gray Carl D
2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3 4	PX1949	Proposed redactions	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information
5		submitted to Court			including, but not limited to, strategic evaluation of forward-
6					looking opportunities, assessment of the competitive
7					landscape, which could be used to injure the designating parties
8					if made publicly available.
9	PX1950	Proposed redactions	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information
10		submitted to Court			including, but not limited to, future business strategy, which
12					could be used to injure the designating parties if made
13					publicly available.
14	PX1951	Proposed redactions	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information
15		submitted to Court			including, but not limited to, internal decision-making
16					processes, future business strategy, strategic evaluation of
17 18					forward-looking opportunities, internal user data, and potential
19					business partnerships, which could be used to injure the
20					designating parties if made publicly available.
21	PX1966	Proposed	Microsoft	Trial Day 5: 978:2	This portion contains non-public
22		redactions submitted to			and highly sensitive information including, but not limited to,
23		Court			investment decisions, future business strategy, internal
24 25					financial/revenue information or projections, confidential terms of
26					existing agreements, potential business
27					partnerships/negotiations, which could be used to injure the
28					designating parties if made publicly available. Microsoft previously sought <i>in camera</i>

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3 4					treatment for this exhibit at ECF No. 261, and now seeks redactions in light of its use at
5					the evidentiary hearing.
7	PX3109	Previously in	Microsoft	Trial Day 3: 34:4; Dkt.	This portion contains non-public
8	FA3109	camera; Proposed	Microsoft	327 (Preliminary Injunction Opinion)	and highly sensitive information including, but not limited to,
9		redactions submitted to		Proposed redactions do	terms of proposed confidential agreements, which could be used
10		Court in		not include the portions cited in the Court's	to injure Microsoft if made publicly available.
11		light of public		public opinion.	
12	DV 4005	opinion cite	N.C. C.	D1 (224 (I D . 1)	
13 14	PX4005	Proposed redactions	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information
15		submitted to Court			including, but not limited to, strategic evaluation of forward-
16					looking opportunities, confidential terms of existing
17					agreements, potential business partnerships/negotiations, and
18					evaluation of a third-party partner, which could be used to
19					injure the designating parties if made publicly available.
20	PX4028	In camera	Microsoft	Trial Day 5: 929:17	This portion contains non-public
21		treatment requested			and highly sensitive information including, but not limited to,
22 23					internal decision-making processes, future business
24					strategy, and internal financial/revenue information or
25					projections, which could be used to injure the designating parties
26					if made publicly available.
27					

	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
P	PX4029	In camera treatment requested	Microsoft	Trial Day 5: 929:17	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and future business strategy, which could be used to injure the designating parties if made publicly available.
P	PX4066	Proposed redactions submitted to Court	Microsoft	Trial Day 4: 840:16	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, and future business strategy, which could be used to injure the designating parties if made publicly available.
P	PX4157	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available.
P	PX4267	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, which could be used to injure the designating parties if made publicly available.
P	PX4303	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, strategic evaluation of forward-looking opportunities, internal

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3 4					financial/revenue information or projections, which could be used to injure the designating parties
5					if made publicly available.
6	PX4334	Proposed	Microsoft	Trial Day 2: 232:2;	This document contains non-
7		redactions submitted to		Trial Day 5: 988:21	public and highly sensitive information including, but not
8		Court			limited to, internal decision- making processes, investment
9 10					decisions, future business strategy, internal financial/revenue information or
11					projections, confidential terms of
12					existing agreements, potential business
13					partnerships/negotiations, which could be used to injure the
14					designating parties if made publicly available. Microsoft
15					previously sought <i>in camera</i> treatment for this exhibit at ECF
16					No. 261, and now seeks redactions in light of its use at
17					the evidentiary hearing.
18	PX4341	Proposed redactions	Microsoft	Trial Day 5: 1003:14	This portion contains non-public and highly sensitive information
19		submitted to Court			including, but not limited to, confidential revenue figures and
20		Court			projections, which could be used to injure the designating parties
21 22					if made publicly available. Microsoft previously sought <i>in</i>
23					camera treatment for this exhibit at ECF No. 261, and now seeks
24					redactions in light of its use at the evidentiary hearing.
25		1	1	1	me evidentiary neuring.
26					

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX4344	Proposed redactions submitted to		Trial Day 2: 244:24; Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to, confidential revenue figures and
	Court		not include the portions	projections, which could be used to injure the designating parties
			cited in the Court's public opinion.	if made publicly available. Document was treated as
				redacted during the hearing (see ECF No. 199) but not
				specifically ruled on due to an error in the daily witness statement.
PX4351	Proposed redactions submitted to Court	Microsoft	Trial Day 1: 66:23	This portion contains non-public and highly sensitive information including, but not limited to, business partnerships, which
				could be used to injure the designating parties if made publicly available.
				publicly available.
PX4430	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal financial/revenue
				information or projections and confidential terms of existing
				agreements, which could be used to injure the designating parties
				if made publicly available.
PX4505	In camera treatment	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information
	requested			including, but not limited to, future business strategy and
				assessment of the competitive landscape, which could be used to injure the designating parties
	PX4344 PX4351	PX4344 Proposed redactions submitted to Court PX4351 Proposed redactions submitted to Court PX4430 In camera treatment requested PX4505 In camera	PX4344 Proposed redactions submitted to Court PX4351 Proposed redactions submitted to Court PX4360 In camera treatment requested PX4505 In camera treatment	PX4344 Proposed redactions submitted to Court Proposed redactions submitted to Court Proposed redactions submitted to Court Proposed redactions cited in the Court's public opinion. PX4351 Proposed redactions submitted to Court Proposed redactions subm

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3					if made publicly available.
4 5 6 7 8	PX4629	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape which could be used to injure the designating parties if made publicly available.
9 10 11 12 13 14 15	PX4647	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, assessment of the competitive landscape, and internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
16 17 18 19 20	PX4673	In camera treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy and internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
21 22 23 24 25 26 27 28	PX4695	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This document contains non-public and highly sensitive information including, but not limited to, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, potential business partnerships/negotiations, presented under a non-disclosure agreement, which could be used to injure the designating parties

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3 4					if made publicly available. This document was mistakenly described as a "webpage" on the
5					FTC's exhibit list, but it is not a public document. It is a
					confidential Xbox presentation.
7 8	PX5000	Continued in camera	Microsoft	Trial Day 3: 653:3; Dkt. 327 (Preliminary	This expert report contains non-public and highly sensitive
9		treatment requested		Injunction Opinion)	information including, but not limited to, internal decision-
0		requested			making processes, investment decisions, future business
11					strategy, market share analyses,
12					strategic evaluation of forward-looking opportunities,
13					assessment of the competitive landscape, internal
14					financial/revenue information or projections, internal user data,
15					confidential terms of existing agreements, potential business
6					partnerships/negotiations, which could be used to injure the
17					designating parties if made
18					publicly available. Additionally, each of the expert reports in this
19					matter contain confidential information submitted by
20					numerous third parties who are not able to view the full reports
21					to determine what of their information should be sealed.
22					Accordingly, Microsoft requests
23					that the Court grant continued in camera treatment to the expert
24				Dkt 224 (Las Dasl.)	Partians of this investigative
25	PX7011	camera;	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion)	Portions of this investigative hearing transcript contain non-public and highly sensitive
26 27		Proposed excerpt and			information, including, but not
28		redactions submitted to		Proposed redactions do not include the portions cited in the Court's	limited to, internal decision- making processes, investment decisions, strategic evaluation of
		Court in		public opinion.	decisions, snategie evaluation of

OMNIBUS ADMIN MOTION TO SEAL

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3 4 5 6 7 8 9 0 1 2 3 4 5	PX7014	light of public opinion cites	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	forward-looking opportunities, market share analyses, assessment of the competitive landscape, and internal discussions of business strategy, which could be used to injure Microsoft if made publicly available. Portions of this investigative hearing transcript contain nonpublic and highly sensitive information, including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, and internal discussions of business strategy, which could be used to injure Microsoft if made publicly
16 17 18 19 20 21 22 23 24	PX7046	Previously in camera; Proposed excerpt and redactions submitted to Court in light of public opinion cite		Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	available. Portions of this deposition transcript contains non-public and highly sensitive information, including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, and internal discussions of business strategy, which could be used to injure Microsoft if made publicly available.
25 26 27 28	RX1080	Proposed redactions submitted to Court	Microsoft	Trial Day 5: 929:17	This portion contains non-public and highly sensitive information including, but not limited to, revenue figures and projections, which could be used to injure the designating parties if made publicly available.

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3	RX1105		Microsoft	Trial Day 5: 929:18	This portion contains non-public
4		treatment requested	1,110103010	11.m. Duy 0. 323.110	and highly sensitive information including, but not limited to,
5					investment decisions, strategic evaluation of forward-looking
6 7					opportunities, and assessment of the competitive landscape, which
8					could be used to injure the designating parties if made publicly available.
9	RX1120	Proposed	Microsoft	Trial Day 5: 1049:16	This portion contains non-public
10 11	1011120	redactions submitted to	WileTosoft	111a1 Day 3. 1047.10	and highly sensitive information including, but not limited to,
12		Court			forward-looking opportunities and internal discussion of
13					business strategy, which could be used to injure the designating
14					parties if made publicly available.
15	RX1128	Proposed	Microsoft	Trial Day 5: 1049:16	This portion contains non-public
16		redactions submitted to			and highly sensitive information including, but not limited to,
17 18		Court			revenue figures and projections, which could be used to injure the
19					designating parties if made publicly available.
20	RX1133	Proposed redactions	Microsoft	Trial Day 5: 1049:16	This portion contains non-public and highly sensitive information
21		submitted to Court			including, but not limited to, strategic evaluation of forward-
22 23					looking opportunities and internal discussion of business
24					strategy, which could be used to injure the designating parties if
25					made publicly available.
26 27	RX1137	camera; Proposed	Microsoft	Trial Day 5: 1040:1; Dkt. 327 (Preliminary Injunction Opinion)	Proposed redacted portions contain non-public and highly sensitive information including,
28		redactions submitted to Court in		Proposed redactions do not include the portions	but not limited to, future business strategy, market share analyses, strategic evaluation of

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1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3		light of		cited in the Court's	forward-looking opportunities,
4		public opinion cite		public opinion.	assessment of the competitive landscape, internal
5					financial/revenue information or projections, and potential business
7					partnerships/negotiations, which could be used to injure the
8					designating parties if made publicly available.
9	RX1140	In camera	Microsoft	Trial Day 5: 1049:17	This portion contains non-public
10 11		treatment requested			and highly sensitive information including, but not limited to,
12					investment decisions, strategic evaluation of forward-looking
13					opportunities, assessment of the competitive landscape, and
14					internal financial/revenue information or projections,
15					which could be used to injure the designating parties if made publicly available.
16	RX1154	Proposed	Microsoft	Trial Day 5: 1049:17	This document contains non-
17 18	ICXII34	redactions submitted to	Wilciosoft	111a1 Day 3. 1047.17	public and highly sensitive information including, but not
19		Court			limited to, internal decision- making processes, investment
20					decisions, future business
21					strategy, potential business partnerships/negotiations, which
22					could be used to injure the designating parties if made
23					publicly available.
24	RX1211	Continued in camera	Microsoft	Trial Day 1: 178:14; Dkt. 327 (Preliminary	This portion contains non-public and highly sensitive information
25		treatment requested		Injunction Opinion)	including, but not limited to confidential terms of existing
26					agreements, and potential business
27 28					partnerships/negotiations, which could be used to injure the designating parties if made

2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
.					publicly available. Although the existence of the agreement is public (and was cited in the Court's opinion), the agreement itself remains highly confidential.
7	RX1212	Continued in camera treatment requested	Microsoft	Trial Day 1: 172:23; Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to confidential terms of existing agreements, and potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Although the existence of the agreement is public (and was cited in the Court's opinion), the agreement itself remains highly confidential.
7	RX1245	Continued in camera treatment requested	Microsoft	Dkt. 228 (Wright Stip.); Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to confidential terms of existing agreements, and potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Although the existence of the agreement is public (and was cited in the Court's opinion), the agreement itself remains highly confidential.
7	RX2170	Continued in camera treatment requested	Microsoft	Trial Day 2: 444:20; Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to confidential terms of existing agreements, and potential business

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3					partnerships/negotiations, which could be used to injure the
5					designating parties if made publicly available. Although the existence of the offer is public
6 7					(and was cited in the Court's opinion), the offer itself remains
8					highly confidential.
9	RX3024	Continued in camera	Microsoft	Trial Day 1: 181:14; Dkt. 327 (Preliminary	This portion contains non-public and highly sensitive information
10		treatment requested		Injunction Opinion)	including, but not limited to confidential terms of existing
11		1			agreements, and potential business
12					partnerships/negotiations, which
13					could be used to injure the designating parties if made
14					publicly available. Although the existence of the agreement is
15					public (and was cited in the Court's opinion), the agreement
16					itself remains highly confidential.
17	RX3025	Continued in	Microsoft	Trial Day 1: 181:25;	This portion contains non-public
18		camera treatment		Dkt. 327 (Preliminary Injunction Opinion)	and highly sensitive information including, but not limited to
19		requested		J 1	confidential terms of existing agreements, and potential
20					business partnerships/negotiations, which
21 22					could be used to injure the
23					designating parties if made publicly available. Although the
24					existence of the agreement is public (and was cited in the
25					Court's opinion), the agreement itself remains highly confidential.
262728	RX3027	Continued in camera treatment requested	Microsoft	Trial Day 1: 183:15; Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to confidential terms of existing

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3 4					agreements, and potential business
5					partnerships/negotiations, which could be used to injure the
6					designating parties if made publicly available. Although the
7					existence of the agreement is public (and was cited in the
8					Court's opinion), the agreement itself remains highly
9					confidential.
10	RX3166	Previously <i>in</i> camera;	Microsoft	Trial Day 5: 1049:17; Dkt. 327 (Preliminary	This portion contains non-public and highly sensitive information
11		Proposed redactions		Injunction Opinion)	including, but not limited to, internal presentations discussing
12 13		submitted to Court in		Proposed redactions do not include the portions	business strategy, which could be used to injure the designating
14		light of public		cited in the Court's public opinion.	if made publicly available.
15		opinion cite			
16	RX5046	Proposed redactions		Trial Day 2: 437:22; Dkt. 327 (Preliminary	This portion contains non-public and highly sensitive information
17		submitted to Court		Injunction Opinion) Proposed redactions do	including, but not limited to sales data and trends, which could be used to injure Microsoft if made publicly available. This
18				not include the portions cited in the Court's	
19 20				public opinion.	document was treated as redacted at the evidentiary hearing, but it was not
21					specifically ruled on.
22	RX5054	Proposed redactions		Trial Day 3: 591:6; Dkt. 327 (Preliminary	This portion contains non-public and highly sensitive information
23		submitted to Court		Injunction Opinion)	including, but not limited to, market share analyses,
24				Proposed redactions do not include the portions	assessment of the competitive landscape, which could be used
25				cited in the Court's public opinion.	to injure the designating parties if made publicly available. This
26					document was treated as redacted at the evidentiary
27					hearing, but it was not specifically ruled on.
28					specifically ruled oil.

1 2	Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
3 4	RX5055	Continued in camera	Microsoft	Trial Day 4: 821:16; Dkt. 327 (Preliminary	This expert report contains non-public and highly sensitive
5		treatment		Injunction Opinion)	information including, but not
6		requested			limited to, internal decision- making processes, investment
7					decisions, future business strategy, market share analyses,
8					strategic evaluation of forward-looking opportunities,
9					assessment of the competitive landscape, internal
10					financial/revenue information or projections, internal user data,
11					confidential terms of existing agreements, potential business
12 13					partnerships/negotiations, which could be used to injure the
14					designating parties if made publicly available. Additionally,
15					each of the expert reports in this matter contain confidential
16					information submitted by numerous third parties who are
17					not able to view the full reports to determine what of their
18					information should be sealed. Accordingly, Microsoft requests
19					that the Court grant continued <i>in</i> camera treatment to the expert
20					reports.
21	RX5056	Continued in camera	Microsoft	Trial Day 4: 915-12; Dkt. 327 (Preliminary	This expert report contains non- public and highly sensitive
22 23		treatment requested		Injunction Opinion)	information including, but not limited to, internal decision-
24		requested			making processes, investment
25					decisions, future business strategy, market share analyses,
26					strategic evaluation of forward-looking opportunities,
27					assessment of the competitive landscape, internal
28					financial/revenue information or projections, internal user data, confidential terms of existing

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Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Additionally, each of the expert reports in this matter contain confidential information submitted by numerous third parties who are not able to view the full reports to determine what of their information should be sealed. Accordingly, Microsoft requests that the Court grant continued <i>in camera</i> treatment to the expert reports.

ARGUMENT

A. Sealing the Trial Exhibits Is Warranted Under Ninth Circuit Precedent as They Contain Microsoft's Confidential Business Information

In the Ninth Circuit, "[p]arties seeking to seal judicial records relating to motions that are 'more than tangentially related to the underlying cause of action,' bear the burden of overcoming the presumption with 'compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure." *Lenovo (United States) Inc. v. IPCom GmbH & Co.*, KG, 2022 WL 2313948, at *1 (N.D. Cal. Jun. 28, 2022); *see also Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) ("[T]he court must 'conscientiously [] balance the competing interests' of the public and the party who seeks to keep certain judicial records secret.""). Courts in this Circuit regularly find that sealing is warranted where the records or information that are sought to be sealed could be used "as sources of business information that might harm a litigant's competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); *see also In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (same); *Velasco v. Chrysler Grp. LLC*, 2017 WL 445241, at *2 (C.D. Cal. Jan. 30, 2017) (stating that "district courts in this Circuit have sealed records containing 'information about proprietary business operations, a company's business mode or

agreements with clients,' [and] 'internal policies and strategies'") (internal citations omitted).

"The Ninth Circuit has explained that 'in general, compelling reasons sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such court files might have become a vehicle for improper purposes, such as the use of records to . . . release trade secrets." *Velasco*, 2017 WL 445241, at *2 (quoting *Elec. Arts*, 298 F. App'x at 569); *see also Elec. Arts*, 298 F. App'x at 569 ("A 'trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.") (citation omitted). A court has "broad latitude" to grant protective orders to prevent disclosure of "many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

In determining whether a document should be filed under seal, courts consider, among other things, the measures taken to guard the information's secrecy and the value of the information to the business or its competitors. *E.g.*, *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002). Here, Microsoft seeks to seal narrowly tailored excerpts of the trial exhibits that reference and reflect, among other things, confidential, proprietary information relating to Microsoft's internal decision-making processes, investment decisions, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information or projections, internal user data, confidential terms of existing agreements, and potential business partnerships/negotiations. The disclosure of this information could be used to injure Microsoft if made publicly available.

B. Sealing the Trial Exhibits Is Necessary to Protect Microsoft's Confidential and Proprietary Business Information

Microsoft seeks to maintain under seal portions of the trial exhibits, as they contain Microsoft's non-public and highly sensitive information from documents obtained during the course of the FTC's investigation and during litigation discovery. Examples of such confidential information include, but are not limited to, Microsoft's internal decision-making processes, investment decisions, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the

competitive landscape, internal financial/revenue information or projections, internal user data, confidential terms of existing agreements, and potential business partnerships/negotiations. Disclosure of this information would provide Microsoft's competitors with private data about Microsoft's performance and business strategy, which could harm Microsoft's competitive standing. *See Cont'l Auto. Sys. v. Avanci, LLC*, 2019 WL 6612012, at *4 (N.D. Cal. Dec. 5, 2019). Thus, the unsealing of this highly confidential and sensitive information would cause injury to Microsoft that cannot be avoided through less restrictive alternatives.

Finally, Microsoft provided the FTC with the confidential business information cited in the trial exhibits pursuant to the statutory and regulatory guarantees of confidentiality contained in the Hart-Scott-Rodino Act or the FTC Act. See 15 U.S.C. §§ 18a(h), 46(f), 57b-2(b), 57b-2(c); 6 C.F.R. § 4.10(d)-(g). In similar cases, the FTC has acknowledged the need to maintain the confidentiality of a party's confidential business information that has been provided to the FTC via a regulatory request. See, e.g., FTC v. Lockheed Martin Corp., 2022 WL 1446650, at *2 (D.D.C. Jan. 25, 2022) ("According to the FTC, sealing the complaint is appropriate . . . because the filing includes confidential information submitted . . . pursuant to 'statutory and regulatory guarantees of confidentiality.' . . . The requested sealing covers only confidential information and is, according to the FTC, required by regulation.").

C. Conclusion

As stated above, compelling reasons justify Microsoft's requests to seal the confidential business information contained in the trial exhibits. Microsoft respectfully requests that this Court grant the Omnibus Motion to Seal the confidential portions of the trial exhibits as identified herein.

IV. EXHIBITS DESIGNATED BY NOA

Nintendo of America Inc. ("<u>NOA</u>") respectfully requests to keep sealed the designated portions of the exhibits as described below.²

Exhibit	Portion of Document	Reasons for Sealing
No.	Sought to be Sealed	
PX3218	Entire document.	This exhibit is a sensitive and confidential email
		that is a continuation of the email thread contained in
		RX2106, which was addressed in NOA's previous Local
		Rule 79-5 Statement (Dkt. No. 168) and corresponding
		Declaration (Dkt. No. 168-2) filed on June 21, 2023.
		Thus, the factual basis for the confidentiality of PX3218,
		and the harm that would occur if it is not kept under seal,
		is discussed in that Declaration at paragraph 9. In sum,
		Nintendo often engages with content publishers/providers,
		including Microsoft and Activision, to discuss and
		negotiate business deals. These discussions are
		confidential and sensitive, and often take place between
		senior executives. Disclosing these discussions would
		allow competitors to leverage confidential negotiation
		points in future negotiations with Nintendo that would
777000		adversely affect Nintendo's negotiation position.
PX3225	Attachment to email.	This email contains a draft agreement between
	• PX3225-002 to	Nintendo and Microsoft, including proposed edits and
	• PX3225-002 to PX3225-005.	redlines. Such information is highly confidential as it
	FA3223-003.	reveals the negotiation process for a contractual agreement.
		Public disclosure would result in competitive harm to
		Nintendo as competitors would undoubtedly use such
DIVAGGA		information in potential future negotiations with Nintendo.
PX3233	Attachment to email.	This email contains a draft agreement between
	• PX3233-002 to	Nintendo and Microsoft, including proposed edits and
	PX3233-002 to PX3233-005.	redlines. Such information is highly confidential as it
	1 A3233-003.	reveals the negotiation process for a contractual agreement.
		Public disclosure would result in competitive harm to
		Nintendo as competitors would undoubtedly use such
		information in potential future negotiations with Nintendo.

² The Court cited three (3) excerpts from NOA exhibits in the Preliminary Injunction Opinion (Dkt. No. 327): PX7059 (19:24-20:1), PX7065 (224:14-225:20), and PX8002 (¶ 2). As to these excerpts, NOA does not seek sealing. NOA understands that the remaining portions of PX7059, PX7065, and PX8002 remain under seal as they are not part of the record in this action. (Dkt. No. 335, at 2). Separately, NOA understands the Court instructed the parties and non-parties to address any exhibits that were admitted as evidence during the preliminary injunction evidentiary hearings. Based on discussions with the parties, it is NOA's understanding that only the NOA exhibits listed in the above table were admitted during the preliminary injunction hearings.

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Exhibit	Portion of Document		
No.	Sought to be Sealed	Reasons for Sealing	
PX3234	Entire document.	This exhibit is a sensitive and confidential email that is a continuation of the email thread contained in PX3219, which was addressed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) filed on June 21, 2023. Thus, the factual basis for the confidentiality of PX3234, and the harm that would occur if it is not kept under seal, is discussed in that Declaration at paragraph 9. In sum, Nintendo often engages with content publishers/providers, including Microsoft and Activision, to discuss and negotiate business deals. These discussions are confidential and sensitive, and often take place between senior executives. Disclosing these discussions would allow competitors to leverage confidential negotiation points in future negotiations with Nintendo that would adversely affect Nintendo's negotiation position.	
All NOA Exhibits	All NOA email addresses.	All of NOA's exhibits referenced above contain internal Nintendo email addresses. There is no public interest in such information and therefore no legitimate need for it to be publicly disclosed.	

V.

A. INTRODUCTION

EXHIBITS DESIGNATED BY SIE

Non-Party Sony Interactive Entertainment LLC ("SIE") produced certain confidential business material in response to a civil investigative demand and subpoenas in the underlying FTC administrative proceeding, *In re Microsoft/Activision Blizzard*, No. 9412 (F.T.C.) ("FTC Action"). *See* ECF 112-2. This confidential SIE information has subsequently been used by Microsoft Corp. ("Microsoft") and Activision Blizzard, Inc. ("Activision" and, together with Microsoft, "Defendants") and the Federal Trade Commission ("FTC") (collectively, the "Parties") in exhibits at the preliminary injunction hearing, and it was incorporated into the Court's Preliminary Injunction Opinion (ECF 327) (the "Opinion"). SIE previously filed statements in support of sealing these hearing exhibits and requested *in camera* treatment. *See* ECF 172, 227, 237, 271.

On July 26, 2023, the Court issued an Order re Motions to Seal and Motions for *In Camera* Review Regarding Trial Exhibits (ECF 335) (the "Order"), which terminates the pending motions to seal and for *in camera* treatment and requires the designating parties to submit a joint omnibus motion addressing any remaining requests to seal the trial exhibits that have not yet been addressed by the Court. *See* Order at 2. Pursuant to this Order and Civil Local Rule 79-5(c), SIE lists below the remaining requests to seal exhibits containing SIE's confidential information.

The information that SIE seeks to maintain under seal contains competitively sensitive non-public information that would injure SIE if made publicly available. The table below describes the SIE highly confidential material found in parties' exhibits and the specific bases supporting sealing of the information. *See* Civ. L.R. 79-5(c). These sealing requests reflect SIE's good faith effort to seek the sealing only of information that is confidential, commercially or competitively-sensitive, and cannot be protected from public disclosure through less restrictive means.

Exhibit	Information Requested to Be Maintained Under Seal	Description of Confidential Information Requiring Sealing	Notes to the Court
RX0020	Redacted	This exhibit contains non-	Prior sealing request: ECF No.
	version	public and highly sensitive	172
	provided to	information about SIE's	
	Court	approach to contract	

1 2	Exhibit	Information Requested to Be Maintained Under Seal	Description of Confidential Information Requiring Sealing	Notes to the Court
3 4			negotiations with third party partners and discussions of particular contract terms	
5	RX0070	Redacted	with particular partners This exhibit contains non-	Prior sealing request: ECF No.
6		version provided to	public and highly sensitive information about SIE's	237
7		Court	business strategies, competitive business plans,	SIE understands that the Court previously approved the sealing
8			future investment plans, console and product development plans, product	and redactions of the documents listed in the Parties' June 23 witness and exhibit lists (ECF
9			roadmaps, or innovation plans, SIE's approach to	Nos. 192, 193), including RX0020. <i>See</i> June 23, 2023 Hr'g
10			contract negotiations with third party partners and	Tr. at 219:4-10. SIE includes RX0020 here out of an abundance
11			discussions of particular contract terms with	of caution and in case it misunderstood the Court's
12			particular partners, as well	statement.
13			as SIE business analysis regarding competitors' and	
14	D.V.0.07.5	D 1 / 1	commercial partners' behavior and products	D' L' CECEN
15	RX0075	Redacted version provided to	This exhibit contains non- public and highly sensitive information about SIE's	Prior sealing request: ECF No. 172
16 17		Court	business strategies, competitive business plans,	
			future investment plans, console and product	
18			development plans, product roadmaps, or innovation	
19			plans as well as SIE business analysis regarding	
20			competitors' and commercial partners'	
21	RX2069	Redacted	behavior and products This exhibit contains non-	Prior sealing requests: ECF Nos.
22		version provided to	public and highly sensitive information about SIE's	172, 271
23		Court	business strategies, competitive business plans,	SIE understands that the Court previously approved SIE's
24			future investment plans, console and product	requested redactions by permitting use of a redacted version of
25			development plans, product roadmaps, or innovation	RX2069 at the preliminary injunction hearing. See June 27,
26			plans as well as SIE	2023 Hr'g Tr. at 532:12-15. SIE
27			business analysis regarding competitors' and	includes RX2069 here out of an abundance of caution and in case
28			commercial partners' behavior and products	it misunderstood the Court's intent.
	RX2098	Redacted	This exhibit contains non-	Prior sealing requests: ECF Nos.

1 2	Exhibit	Information Requested to Be Maintained Under Seal	Description of Confidential Information Requiring Sealing	Notes to the Court
3		version	public and highly sensitive	172, 271
4		provided to Court	information about SIE's	SIE understands that the Court
4		Court	approach to contract negotiations with third party	previously approved SIE's
5			partners and discussions of	requested redactions by permitting
6			particular contract terms with particular partners as	use of a redacted version of RX2098 at the preliminary
			well as SIE business	injunction hearing. See June 27,
7			analysis regarding competitors' and	2023 Hr'g Tr. at 602:19-603:15. SIE includes RX2098 here out of
8			commercial partners'	an abundance of caution and in
9			behavior and products	case it misunderstood the Court's intent.
	RX2163	Redacted	This exhibit contains non-	Prior sealing request: ECF No.
10		version provided to	public and highly sensitive information about SIE's	172
11		Court	business strategies,	SIE understands that the Court
12			competitive business plans, future investment plans,	previously approved the sealing and redactions of the documents
			console and product	listed in the Parties' June 23
13			development plans, product roadmaps, or innovation	witness and exhibit lists (ECF Nos. 192, 193), including
14			plans as well as SIE	RX2163. See June 23, 2023 Hr'g
15			business analysis regarding competitors' and	Tr. at 219:4-10. SIE includes RX2163 here out of an abundance
13			commercial partners'	of caution and in case it
16			behavior and products	misunderstood the Court's
17	PX3080	Entire exhibit	This exhibit contains non-	Statement. Prior sealing request: ECF No.
18			public and highly sensitive information about SIE's	172
			business strategies,	
19			competitive business plans,	
20			future investment plans, console and product	
			development plans, product	
21			roadmaps, or innovation plans as well as SIE	
22			business analysis regarding	
23			competitors' and commercial partners'	
	D.V.5000	D 1 4 1	behavior and products	D. I. A ECEN
24	RX5000	Redacted version	This exhibit contains non- public and highly sensitive	Prior sealing request: ECF No. 172
25		provided to	information about SIE data,	
26		Court	analysis, and survey results relating to SIE product	SIE does not believe this document was actually admitted
			strategy and platform users'	by the Court. See June 27, 2023
27			behavior on SIE's platform, including user engagement,	Hr'g Tr. 496:5-500:1. After a dispute arose as to the nature and
28			gameplay, spend, likelihood	admissibility of the document, SIE
			of switching, or potential	told Counsel for Microsoft that it

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Exhibit	Information Requested to Be Maintained Under Seal	Description of Confidential Information Requiring Sealing	Notes to the Court
		competitive impacts of Microsoft's proposed acquisition of Activision, SIE's approach to contract negotiations with third party partners and discussions of particular contract terms with particular partners, the nature and scope of SIE's technical collaboration with particular publishers, as well as SIE business analysis regarding competitors' and commercial partners' behavior and products	would be prepared to address the document with the Court if Microsoft renewed its request for admission, which Microsoft never did. (Had Microsoft raised the issue, SIE would have confirmed that its investigation revealed that Microsoft's description of the nature of the document was mistaken.) Given that the document was never admitted, only "linked" to the designations from a deposition transcript where it was never introduced, Microsoft's inclusion of RX5000 as a Ryan deposition exhibit is inappropriate. SIE does not believe it is properly before this Court for issues of confidentiality. See ECF 335 at 2 (directing that motions to seal unadmitted exhibits are "moot as any such exhibits are not part of the record in this action"). SIE has nonetheless included the exhibit in this motion and offered proposed redactions in an abundance of caution.

B. THERE ARE COMPELLING REASONS TO SEAL SIE'S CONFIDENTIAL BUSINESS INFORMATION

Although the public enjoys a general right to inspect and copy public records, including judicial records, "access to judicial records is not absolute." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). The presumption in favor of access to judicial records may be overcome by "compelling reasons" that justify sealing them, such as the need to prevent court filings from serving as "sources of business information that might harm a litigant's competitive standing." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598-99 (1978)). Courts have broad discretion to prevent disclosure of "many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211

(9th Cir. 2002). Specifically, if revealing "confidential business material, marketing strategies, [and] product development plans could result in improper use by business competitors seeking to replicate [the company's] business practices and circumvent the time and resources necessary in developing their own practices and strategies," a court may seal the materials in question. *Roley v. Google LLC*, No. 18-cv-07537-BLF, 2020 WL 13517498, at *1 (N.D. Cal. Apr. 28, 2020) (quoting *Algarin v. Maybelline, LLC*, No. 12CV3000 AJB DHB, 2014 WL 690410, at *3 (S.D. Cal. Feb. 21, 2014)).

Non-parties receive special deference when these issues are considered. *See, e.g., United States v. Bazaarvoice, Inc.*, No. 13-cv-00133-WHO, 2014 WL 11297188, at *1 (N.D. Cal. Jan. 21, 2014) (granting motion to seal third-party trial exhibits, noting that disclosure would "chill investigations in the future where third party documents are essential").

Here, Non-Party SIE seeks sealing of limited non-public information containing SIE's highly confidential analyses and business strategy information related to its consoles, subscription services, and cloud gaming businesses. *See* Ex. SIE-1 (Decl. of C. Svensson).³ In particular, the information that SIE seeks to protect includes:

- Non-public SIE data, analysis, and survey results relating to SIE product strategy and platform
 users' behavior on SIE's platform, including user engagement, gameplay, spend, likelihood of
 switching, or potential competitive impacts of Microsoft's proposed acquisition of Activision;
- Non-public information about SIE's approach to contract negotiations with third party partners and discussions of particular contract terms with particular partners;
- Non-public information on the nature and scope of SIE's technical collaboration with particular publishers;
- Non-public information about SIE's business strategies, competitive business plans, future investment plans, console and product development plans, product roadmaps, innovation plans;
 and
- Non-public SIE business analysis regarding competitors' and commercial partners' behavior

³ The Declaration of Christian Svensson was submitted at ECF 172-1 in conjunction with Non-Party SIE's Administrative Motion for Sealing and In Camera Treatment (ECF 172). The competitively sensitive issues in today's request are the same as those addressed in the previous Declaration, as explained in the chart above, and Mr. Svensson's Declaration is resubmitted here as Exhibit SIE-1.

and products. See id. \P 3.

SIE uses this information to operate its business and shape its future strategy. As explained in Mr. Svensson's declaration, if these business secrets were made available to the public, SIE's competitors could use these secrets to inform their own strategies to gain an unfair advantage in competing with SIE. See id. ¶¶ 4-8. Business partners could likewise gain an unfair advantage in their relationships with SIE by understanding SIE's strategic objectives, negotiation tactics, and relationships with other business partners. See id. These concerns are particularly severe here, as the information is current, which makes it more valuable to others because it is actionable. See id. ¶ 8.

In short, the information should be sealed because disclosure would undermine SIE's business and give competitors and business partners an unfair advantage. *See* Ex. SIE-1 (Decl. of C. Svensson); *see also Synchronoss Techs., Inc. v. Dropbox Inc.*, No. 16-cv-00119-HSG, 2018 WL 6002319, at *1 (N.D. Cal. Nov. 15, 2018) (noting that courts have sealed confidential business information when it "prevent[ed] competitors from gaining insight into the parties' business model and strategy") (citation omitted); *Bauer Bros. LLC v. Nike, Inc.*, No. 09cv500-WQH-BGS, 2012 WL 1899838, at *2 (S.D. Cal. May 24, 2012) (concluding that "public disclosure of Nike's confidential business materials . . . could result in improper use by business competitors seeking to replicate Nike's business practices and circumvent the considerable time and resources necessary in product and marketing development").

C. THE COMPELLING REASONS TO SEAL OUTWEIGH ANY PUBLIC INTEREST IN THE REDACTED MATERIAL

SIE's request for sealing is the result of its good faith effort to seek the sealing only of information that is confidential, commercially or competitively-sensitive, and cannot be protected from public disclosure through less restrictive means. Any public interest in disclosing this information is outweighed by the prejudice that will result to SIE, a non-party, if no protection is granted. *See Bazaarvoice, Inc.*, 2014 WL 11297188, at *1 (noting importance of protecting third parties).

D. CONCLUSION

For the foregoing reasons, SIE respectfully requests that the Court grant SIE's Administrative Motion to File Under Seal Certain Confidential Business Material and maintain under seal SIE's confidential information listed in the chart above.

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